

Legal Position of Minor and Minor's Agreement

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Abstract: Children constitute nearly 38 percent of the country's population and have been declared as national assets by the apex courts. They are innocent and helpless guys and need proper care and nourishment during the growing years so that they become useful members of the society.

Law has provided to minor's and persons of unsound mind a special protection from the consequences of their own agreement because it is felt that such people would not be able to safeguard their interest themselves while making deals with others. Protection of these persons has been uppermost in the minds of law authorities while determining the consequences of the agreement made by these persons with other.

Keywords: Indian contract act, Legal Position of Minor.

1. INTRODUCTION

The term minor/minors is nowhere defined in the contract act. But taking into consideration the wordings of section 11 of Indian contract act, a minor is a person who has not attained the age of 18 years. The age of majority of a person is regulated by section 3 of the Indian majority act, 1857.

Section 3 of the INDIAN MAJORITY ACT, 1875 provides about the age of majority. It states that a person is deemed to have attained the age of majority when he completes the age of 18 years, except in the following cases a person continues to be a minor until he completes the age of 21 years.

- Where a guardian of a minor's person or property has been appointed under the Guardians and Wards Act, 1890 or
- Where the superintendence of a minor's property is assumed by a Court of Wards.

Section 11 of the act expressly forbids a minor from entering into a contract. The effect of this express prohibition is that any contract entered into by a minor is void-ab-initio regardless of whether the other party was aware of his minority or not.

A person who is of 17 years old and 364 days old, he will be called as a minor in the eyes of law. Minor's interest is watched by the law. It is not that we are against the minor that he should not enter into the contract; we are trying to give a protection to the minor so that nobody can take advantage of his minority. Because law presumes that minor's mind is not mature enough to understand what is right, what is wrong, what is fair, what is unfair, what is true, what is false, So in a way by debarring or by disqualifying a person who is a minor to enter into the contract, it is in the interest of the minor.

2. LITERATURE REVIEW

In 1903 Privy Council in its major decisions has declared that contract entered into by the minor is void ab initio. Before 1903, it was not clear that contract enter into by the minor is void or voidable. There was confusion but a landmark judgement came related to the minor's position in 1903 and that to in a very prominent case known as Mohiri Bibi VS Dharma Das Ghose. In this case the Privy Council in 1903 declared that if a minor enters into the contract, that contract is a void ab initio. Now when we say void ab initio, the meaning of the ab initio is that it is void from the very beginning. Non existing from the very beginning, whomsoever will enter into the contract with the minor, that particular agreement cannot be enforceable in the eyes of law.

And in the beginning I mention to make an agreement enforceable and to convert into the contract, one of the condition that party should be competent to contract but minor is not competent to contract because he has not attained the age of 18 and anyone who enters into the contract with the minor that contract will be void ab initio. But simultaneously we have incorporated a clause in the law and that is that minor can enter into the contract for his benefits. When we say that minor can enter into the contract for his benefits meaning thereby if anything which is in the interest of the minor, that particular contract a minor can enforce. He can sue the other party to get the benefit for his welfare or for his wellbeing, but we should not lose a site of very prominent thing which is mentioned in the law and that is that if a minor enters into a agreement with anybody, then he is not personally answerable, he can sue the other party to get the benefit for his own advantage. The other party cannot file a suit on the minor, then if the other party file a suit on the minor, then the minor will not be personally answerable, minor's property will be answerable to pay the debt. But suppose if the minor has no property then the other party cannot take anything from the minor.

The first point regarding the minor's agreement is the agreement enter into by the minor is a void ab initio. It is void from the very beginning and this decision has been given in the Mohiri Bibi VS Dharma Das Ghose case.

The second point is the minor can enter into the contract for his own benefits, again if someone has fulfilled the basic necessities of the minor, then in that case also minor's property will be responsible. When we say the basic necessities of the minor, we know it that law says the ultimately minor has to fulfill his basic necessities and for that he is not personally answerable, his property will be answerable.

The law protects minor's rights because they are not mature and may not possess the capacity to judge what is good and what is bad for them. The position of agreement made by a minor is void-ab initio, i.e. absolutely null and void from the very beginning. It give rise to no legal consequences.

The exact status of a minor's agreement has not been laid down in the act. Section10 of the INDIAN CONTRACT ACT 1872, states, that the agreement, to be valid, must be made by competent persons. The INDIAN CONTRACT ACT simply says that only a person who is a major is competent to contract.

A clear view that the minor's agreement is absolutely void was provided in a landmark judgement in 1903 in the case of MOHIRI BIBI V/S DHARMODAS GHOSH.

BEFORE THIS JUDGEMENT- There were two views on the nature of a minor's agreement, that the agreement was absolutely void or that it was only a voidable contract. The primary judicial objective of protection to minors could be served by both these legal positions. If the agreement was held as absolutely void then it would not give rise to obligation for any of the parties, and if it was viewed as a voidable contract, than, minor would have an option to have second thought on it to decide wheather to cancel it or continue it.

In the MOHIRI BIBI CASE, however, sir lord north argued that if the minor's agreement is taken as a voidable contract, than it would pre-suppose the existence of a contract at least; and, this is not possible as section 10 makes it clear that minor is not capable of making a contract at all. So, it was concluded that an agreement entered into by a minor would be an absolute nullity i.e. an absolutely void agreement, possessing no features of legal existence at all.

CASE-MOHORI BIBI V/S DHARMODAS GHOSE, (1903) ILR 30 CAL 539(PC):

The plaintiff, Dharmodas Ghose, while he was a minor, mortgaged his property in favour of the defendant, Brahma Dutt, who was a money lender to secure a loan of Rs 20,000. The actual amount of loan given was less than Rs 20,000. At the time of the transaction the attorney, who acted on behalf of the money lender, had the knowledge that the plaintiff is a minor.

The plaintiff brought an action against the defendant stating that he was a minor when the mortgage was executed by him and, therefore, mortgage was void and in-operative and the same should be cancelled.

The defendant contended that the plaintiff had fraudulently misrepresented his age and therefore no relief should be given to him, and that, if mortgage is cancelled as requested by the plaintiff, the plaintiff should be asked to repay the sum of Rs 10,500 advanced to him.

It was held that the law of estoppel was not applicable to the present case, where the statement (about age) is made to a person who knows the real facts and is not misled by the untrue statement and hence, the view is

- (a) The lender was not held entitled to the return of his money because he had given the loan with the full knowledge of the minority of the borrower.
- (b) The agreement was absolutely void, and; mortgage was void and inoperative and the same should be cancelled.

AGGREEMENT MAY BE ENFORCED FOR MINOR'S BENEFIT:

The fundamental rule, given above, aims to protect the minor. However, if application of this rule could cause loss to the minor in a case, than, the agreement shall be enforced for his benefit.

This can happen in cases where minor has done his part of the work or has parted with consideration from his side under the agreement, and the other party has defaulted. E.g. - a minor may have given loan to a person and the borrower may refuse to return money on the ground that the agreement is void. Minor shall be entitled to get back his money.

Although the INDIAN CONTRACT ACT is silent about the right of minor for enforcing the contract, the judicial pronouncements have given the benefit to the minor. In majority of cases, where the minor is the beneficiary, the agreements are held to be valid and enforceable.

CASE-GENERAL AMERICAN INSURANCE CO V/S MADANLAL SONULAL:

In this case, goods were insured on behalf of the minor, and the minor was allowed to recover the insurance money after the loss.

CASE-RAGHAVA CHARIAR V/S SRINIVASA (1916):

P, a minor, advanced certain sum of money to Q. Q executed a mortgage of his immovable property in favour of P, as a security of money advanced by him. In this case, the mortgage can be enforced by P as the transaction is for his benefit.

NO ESTOPPEL AGAINST A MINOR:

The rule of estoppel is a general principle of law which lays down that if a person has, by words or conduct, led another to believe in a state of facts as true and induced him to act on that faith, such a person will be stopped by law from denying those facts later even if the facts presented earlier were untrue; thus, he will be required to face the consequences of his false statements as if it was true.

In number of decided cases, the court is of the opinion that where an infant's represents fraudulently or otherwise that he is of age, and thereby induces another to enter into a contract with him, then the infant,(in a case against him), is not 'estopped' from setting up infancy (as a defense), as held in GADIGEPPA BHIMAPPA METS V/S BALANGOWDA BHIMANGOWDA CASE.

If the rule of estoppel is applied against a minor, it would amount to an indirect way of enforcing a void agreement. Therefore, the rule of estoppel does not apply against a minor.

NO RATIFICATION ON ATTAINING MAJORITY AGE:

'Ratification' means the subsequent approval or adoption of something. If a minor, on attaining the majority age, grants approval to his earlier void agreement, the approval will not make it a valid contract.

For example- K, a minor takes a loan of Rs 11,000 and executes a promissory note in favour of the lender. He is not liable under this p/note, neither during minority nor after attaining majority age. If, on attaining majority age, he executes a second p/note in favour of the same person to replace the first one, the second note will also not be binding on him (CASE-SURAJ NARAIN V/S SUKHU AHIR).

In the above example, the second promissory note is void as it is without consideration. However, on attaining the age of majority the person can enter a fresh agreement, with fresh consideration and terms of contract, but cannot carry on with the old agreement with some changes here and there (CASE-INDRAN RAMASWAMI V/S ANTHIAPPA CHETTIAR (1906) MLJ 422).

If at the desire of a minor, services are rendered to him during minority and continued after he attains majority age, such services will form a good consideration for any promise that the major-turned minor may make later to the person rendering the services (CASE- SINDHA SHRI V/S ABRAHAM).

SERVICE AGREEMENT FOR MINOR IS NOT ENFORCEABLE:

An employment agreement for a minor shall be void as it will create a personal obligation upon him to work.

CASE-RAJ RANI V/S PREM ADIB: In this case, a film producer agreed with the guardian of a minor girl to give to the girl a role in his film. Later, he gave the role to another girl. In a suit by the girl, it was held that the agreement was not enforceable because the girl's promise to work was an agreement for rendering personal service and hence a void agreement.

LIABILITY FOR MINOR:

A) LIABILITY FOR RESTITUTION TO MAJOR PERSONS IN SOME CASES:

The rules mentioned so far favors and protect minors. They indicate that if a minor has obtained a benefit from another party in cash or kind, he would not have to provide restitution to that party, because the agreement is absolutely void.

Even in the case where a person dealing with a minor has been genuinely misled by a misrepresentation of age by the minor, the non-application of 'rule of estoppel' against minor will offer him protection.

But, the courts have also looked into the question of placing limits on the privileged position of minor and providing restitution to the other party in case of a fraud of minor. Section 64 and 65 of the contract act, which deal with the question of restitution, are not applicable in the case of a minor's agreement. Some relief is therefore, sought to be provided to the other party under what is called the "doctrine of equitable restitution". The courts are empowered to order restitution from minors on equitable i.e. just and fair, ground.

However, no unanimous view could emerge for quite some time on how best to protect the other party from the fraud of minor about his age.

CASE- JAGER NATH SINGH V/S LALTA PRASAD:

It was held that if a minor has sold property to a person by misrepresenting his age, he can recover back the property only after making restitution of the benefit received by him.

CASE- CESLIE(R) LTD V/S SHEILL:

It was held in this case that if a minor has been guilty of misrepresenting his age, he may be ordered to restore back the goods that he may have received if they are still traceable with him; but money received by the minor may not be traceable in specie (i.e. in the same form) with the minor, so, its restoration cannot be ordered.

CASE- KHAN GUL V/S LAKHA SINGH;

Court ordered a minor to refund Rs 17,500 which he had taken as advance payment for sale of land and had later refused to complete the contract. So in this case the scope of the doctrine of equitable restitution was extended to cover cash also. In this judicial debate; THE KHAN GUL JUDGEMENT has finally prevailed and it found expression in the provisions of the specific relief act, 1963 to provide some protection to other persons.

RULES FOR RESTITUTION:

The following can be described as the prevailing position of law regarding restitution in favour of a person dealing with a minor

A) Where the person dealing with a minor is aware of or has reason to be aware of the minority age of the opposite party, no restitution, whatsoever, shall be granted to that person.

B) Where minor mislead the other person into believing him to be of majority age, restitution shall be available to the deceived party under section 33 of the specific relief act, 1963 which brings out as follows

1) where minor is the plaintiff and has requested the courts to cancel his agreement under an instrument to get his money or property restored from the other party, the court will first demand from the minor either the restoration back of what he himself obtained from the other party, or if this was not possible, to compensate him suitably. This rule is based on the principle 'one who seeks equity must do equity himself too' (harder attitude towards minor).

2) where the minor is a defendant because the other party has filed a case against him for the enforcement of the agreement, the court will order the minor only to restore back that part of the property or money received from the other party which has benefitted him or his estate or which is still traceable with him in whatever form (Softer attitude towards minor).

3) Where the court has no reason to believe that restitution is necessary in the interest of justice or where the other party himself is unscrupulous towards the minor, or is not influenced by the false representation by minor, the minor may not be asked to restore back anything.

B) APPRENTICESHIP AGREEMENT ARE ENFORCEABLE:

Apprenticeship agreements are made for the minor's benefit, to enable him to acquire skills under a trained person at an early age. Such agreements have been held to be enforceable. But, the requirement for this is that the apprenticeship agreement should have been made in accordance with the provisions of the apprentices act, 1961.

The act lays down the following requirement for the validity of the contract

- a) The apprentice should not be below 14 years of age.
- b) He should satisfy such standard of education and physical fitness as may be prescribed.
- c) In case the apprentice is a minor, the contract should have been made by the guardian on behalf of the minor.

C) SPECIFIC PERFORMANCE OF AGREEMENT MADE BY MINOR'S GUARDIAN:

'Specific Performance' means the performance of the contract in the manner as intended by the parties. Where the guardian of a minor makes an agreement on minor's behalf, the agreement may be enforced and its 'specific performance' ordered under certain circumstances.

Conditions required

The courts May, in the interest of justice, order a specific performance of a minor's agreement, if the following conditions are satisfied

- 1) It is made by the guardian on minor's behalf
- 2) The guardian is competent to make that agreement
- 3) The agreement is for the benefit of the minor

Guardians are not competent to make certain kinds of agreement, e.g. an agreement of service by minor or an agreement to create a personal liability for the minor.

The judicial view on the above matter was not always the same

CASE- MIR SARWARJAN V/S FAKHRUDDIN M. CHAUDHURY:

In this case, an agreement was made to purchase immovable property by a guardian on behalf of a minor. The minor filed a case to seek a decree of specific performance against the other party to recover possession of the property.

The court rejected the case on the ground that it was not within the competence of the guardian of a minor to bind his ward in a contract to purchase immovable property; so, the agreement was void.

With the passage of time, it was felt that minors were becoming active players in their family businesses or in their personal pursuits. As a result, THE MIR SARWARJAN CASE could not continue to apply on minors in their worldly dealings. Therefore, the courts have adopted a slightly more flexible approach on minor's agreement and they order specific performance when demanded by one or the other party, if the conditions mentioned above were fulfilled.

D) MINOR'S PROPERTY LIABLE FOR NECESSARIES:

If a minor or any other incompetent person or anyone whom he is legally bound to support, is supplied by another person with necessaries, the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person (section 68).It may be emphasized that this rule makes only the property of minor liable and not the minor personally.

'Necessaries' would include such items as food, clothing, accommodation, expenses on education, professional training, training in a sport, medical treatment, marriage of a dependent of the minor or pursuing a court case etc. and not items of comfort or luxury.

However, this is a very flexible term and could include many things depending upon the socio-cultural status of the minor and the immediate circumstances faced by him. Expensive clothing may not be necessaries for a middle class minor as a routine but may become necessaries on the occasion of marriage in the family or for the minor of a princely family.

'Necessaries' would also include essential services rendered to the minor or his dependent such as legal services or medical treatment.

This rule too aims at benefiting the persons who are incompetent to contract, in a certain crisis situation, a person may, without any agreement, supply some necessaries to a minor or incur an expenditure on such necessaries for him or his dependent to render help. Section 68 states that such a person would be entitled to a reimbursement of a suitable amount from the property of the minor.

It is this assurance which will encourage people to help minors in their times of difficulties. Example-A minor is ill and needs urgent medical attention. P, a neighbor, arranges for his treatment and spends his money. He is entitled to be paid out of minor's property.

CASE-NASH V/S INMAN (1908):

P, a minor, was amply supplied with proper clothes according to his position. He bought a number of new jackets; including eleven fancy waist-coats from Q. Q could not recover the price as it was held that these were not necessaries.

3. OBJECTIVE OF THE STUDY

- To clarify the status of minors agreement-whether void and voidable.
- To enlighten the landmark judgements of court regarding minors agreements.
- To recognize the fact that minor is not personally answerable. However his property will be answerable.
- To highlight the fact that contracts of apprenticeship are binding upon minor provided the contract satisfies the requirement of apprenticeship act.
- To highlight judicial pronouncement which enables minors agreement to be enforceable for his benefit.
- To clarify that restitution rules are applicable on minor based on the principle of one who seeks equity must do equity himself too.

4. CONCLUSION

Generally it is assumed that mental faculties of a minor are in developing state. He is not mature enough to understand what is good and what its implications on his interest are. In the light of it, law protects a minor, so that any person by making an agreement with him cannot exploit him.

The Indian contract act 1872, has also granted privileged position to a minor with regard to agreements made by him. In any agreement he does not incur personal liability. He is allowed to get benefit in an agreement entered into by him. Not only this, but entire judicial mechanism helps him, judges are their councillors, jury are their servants and law is their guardian. But at the same time, it is ensured that while protecting interest of minor, unnecessary hardships should not be created for the persons who deal with a minor.

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